JOHNSTON & OTHERS v. VIRGINIA COAL & IRON CO.—Decided at Wytheville, June 30, 1898.—*Harrison*, J:

1. GRANT OF WHOLE ESTATE BY TENANT IN COMMON—*Color of title—Adverse possession—Suit for partition by co-tenants—Statute of limitations.* A stranger who takes a conveyance of the whole estate in a tract of land conveyed to him by metes and bounds, and enters into exclusive possession under such conveyance, claiming title to the whole, acquires at least color of title to the whole tract even though his grantor was only a tenant in common with others of the land, and, after the lapse of time necessary to bar an action of ejectment, has the right to rely upon his adversary possession, and is in no sense a co-tenant with the tenants in common of his grantor, and a court of chancery has no jurisdiction of a suit for partition by such tenants in common; but even if the court had such jurisdiction, the claim of the co-tenants being barred by the statute of limitations, the suit should be dismissed.

JACKSON'S ADM'R v. JACKSON.—Decided at Wytheville, June 30, 1898.—*Cardwell*, J:

1. PERSONAL SERVICES—*Compensation for as between near relatives—Evidence required—Presumption.* Whenever compensation is claimed for services rendered near relatives, as a father, brother, or grandfather, and the like, the law will not imply a promise of payment, and no recovery can be had unless an express contract or its equivalent is shown. A moral obligation to pay is not sufficient, but an express promise must be proved, or facts, from which such promise can be reasonably inferred must be established by evidence so clear, direct, and explicit, as to leave no doubt as to the undertaking and intention of the parties. This is especially so when the party sought to be charged is dead. It must be shown that the deceased intended to and did assume a legal obligation to the plaintiff for such services of such a character that it could be legally enforced against him. Generally, the services of a child, grandchild, or other near relative, are presumed to have been rendered in obedience to the promptings of affection, and not with a view to compensation. Such presumption, however, may be rebutted by positive and direct evidence to the contrary.

2. PARENT AND CHILD—*Emancipation of minor—Compensation for services.* A father may emancipate his minor child and permit him to contract for and receive his wages, and in case of such contract the father is not allowed to recover for the child's wages.

CHAPMAN, RECEIVER, v. VIRGINIA REAL ESTATE INVESTMENT CO. Decided at Wytheville, June 30, 1898.—*Buchanan*, J:

1. APPEAL AND ERROR—*Two trials in court below—Reviewing the first trial—What rulings of trial court will not be reviewed.* In looking to the evidence and proceedings on the first trial of an action at law (which has been twice tried in the lower court) in order to ascertain whether error was committed in setting aside the verdict on the first trial, the rulings of the lower court in admitting evidence and in giving and refusing instructions can have no effect and will not be considered where it appears that the verdict was in favor of the plaintiff, and gave

him all that he demanded in his declaration. If all such rulings had been in favor of the plaintiff instead of against him, the verdict of the jury could not have been more favorable to him.

2. APPEAL AND ERROR—*Order granting or refusing a new trial—Verdicts—Case at bar.* The verdict of a jury which has been approved by the judge who presided at the trial ought not to be set aside without the strongest reasons therefor. But if the trial judge is dissatisfied with the verdict, and grants a new trial, some latitude must be allowed to his discretion, especially where the propriety of its exercise is affirmed by a verdict on such new trial for the party to whom it was granted. In setting aside the verdict the trial court must, to some extent, pass upon the weight of the evidence before the jury, and a stronger case must be made in order to justify an appellate court in disturbing an order granting a new trial, than one refusing it, because the refusal operates as a final adjudication of the rights of the parties, while the granting of the new trial simply invites further investigation, and affords an opportunity for showing the truth without concluding either party. In the case at bar the order setting aside the first verdict and granting a new trial ought not, under the evidence, to be disturbed.

OSBORNE AND OTHERS v. KAMMER AND OTHERS.—Decided at Wytheville, June 30, 1898.—*Buchanan*, J. Absent, *Cardwell*, J:

1. MANDAMUS TO COMPEL LEVY OF CITY TAXES—*Parties—Who may apply for writ of error.* The duty of levying taxes to pay the debts of a city is a corporate duty of the city council, which it may be compelled to perform by *mandamus*. The members of the council in their capacity of councilmen may be proceeded against for contempt for failure to obey an order of a court of competent jurisdiction directing a levy to be made, but an order directing the councilmen to make the levy is none the less an order to the city council in its corporate capacity. To such an order the councilmen in their corporate capacity alone can apply for a writ of error.

SIMON'S ADM'R v. SOUTHERN RAILWAY CO.—Decided at Wytheville, June 30, 1898.

1. RAILROADS—*Crossing—Signal—Substitution of other signals.* It cannot be determined, as a matter of law, that a long loud blast for a station signal is a sufficient substitute for the crossing signal of two sharp blasts at least three hundred yards before reaching the crossing required by the statute.

2. DEMURRER TO EVIDENCE—*Presumptions.* Upon a demurrer to the evidence the court is required to make all the presumptions in favor of the verdict that a jury might have made had not the case been withdrawn from it.

3. RAILROADS—*Failure to give crossing signal—Relation of negligence to the injury.* Proof of the failure of a railroad company to give the crossing signal required by statute and of injury to the plaintiff is not of itself sufficient to support a verdict against the company. But such verdict will not be disturbed where the evidence tends to show that the injury would not have been inflicted but for the failure of the company to give such signal.